

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR08-527

BRITTANY NICOLE GARTRELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** January 14, 2009

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT,  
[NO. CR-2005-444]

HONORABLE GARY COTTRELL,  
JUDGE

MOTION TO WITHDRAW DENIED;  
RE-BRIEFING ORDERED

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## JOSEPHINE LINKER HART, Judge

Brittany Nicole Gartrell pleaded guilty in Crawford County Circuit Court on April 10, 2006, to the charges of residential burglary, misdemeanor theft of property, and possession of methamphetamine. She received a suspended imposition of sentence (SIS) for five years on all the charges. On October 24, 2007, the State petitioned to revoke her SIS, alleging that she had been arrested for possession of drug paraphernalia, possession of marijuana, and possession of Xanax and that this conduct violated the terms of her SIS. After a hearing, the trial court found that Gartrell had violated the terms and conditions of her SIS and imposed consecutive sixty-month sentences for the burglary and methamphetamine charges.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, Gartrell's counsel has filed a motion to withdraw on grounds that the appeal is without merit. The clerk of this court furnished

appellant with a copy of her counsel's brief and notified her of her right to file *pro se* points for reversal within thirty days. Gartrell did not personally avail herself of this opportunity; however, her mother, who is not a licensed attorney in this state, did. The State has filed a brief contesting the propriety of Gartrell's mother filing *pro se* points.

The motion submitted by Gartrell's counsel was accompanied by an abstract and brief purportedly referring to everything in the record that might arguably support an appeal. Generally, we find that Gartrell's counsel has complied with Rule 4-3(j). However, based upon our review of the record and the law concerning the procedures for revoking an SIS, we have concluded that an argument on appeal addressing the lawfulness of revoking Gartrell's SIS on grounds other than those specified in the revocation petition would not be wholly frivolous. While we are mindful of this court's decision in *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003), we believe an argument that the instant case is distinguishable would likewise not be wholly frivolous.

We also note that the trial court revoked Gartrell's SIS on a misdemeanor theft of property offense, nearly twenty months after Gartrell received a SIS on that charge. We direct Gartrell's attorney to address whether the trial court's disposition comports with Arkansas Code Annotated sections 5-4-306 and -307 (Repl. 2006).

When an appeal is submitted to this court under the *Anders* format and we believe that an issue is not wholly frivolous, we are required to deny appellate counsel's motion to withdraw and order re-briefing in adversary form. *Tucker v. State*, 47 Ark. App. 96, 885 S.W.2d 904 (1994).

Motion to withdraw as counsel denied.

Re-briefing ordered.

ROBBINS and BAKER, JJ., agree.